

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Centennial Cellular Tri-State Operating Partnership)	
Centennial Claiborne Cellular Corp.)	
Petition for Waiver of Section 54.313(d)(3) of the)	
Commission's Rules)	
)	
Michiana Metronet Inc.)	
Centennial Michigan RSA 6 Cellular Corp.)	
Centennial Michigan RSA 7 Cellular Corp.)	
Petition for Waiver of Section 54.313(d)(3) of the)	
Commission's Rules)	

OPPOSITION OF CENTURYTEL, INC.

CenturyTel, Inc. ("CenturyTel"), through its attorneys, hereby opposes the Petitions for Waiver ("Petitions") filed by Centennial Cellular Tri-State Operating Partnership, Centennial Claiborne Cellular Corp., Michiana Metronet Inc., Centennial Michigan RSA 6 Cellular Corp., and Centennial Michigan RSA 7 Cellular Corp. (collectively, "Centennial") in the above-captioned proceeding.¹ In its Petitions, Centennial seeks a waiver of the Commission's rule establishing the deadline for the filing of state public service commission ("PSC") certifications that recipients of federal universal service support will use that support only for the provision, maintenance, and upgrading of facilities and services for which such support is intended.²

¹ See *Public Notice*, Wireline Competition Bureau Seeks Comment on Petition of Michiana Metronet Inc., Centennial Michigan RSA 6 Cellular Corp., and Centennial Michigan RSA 7 Cellular Corp. for Waiver of Section 54.313(d) of the Commission's Rules, CC Docket No. 96-45, DA 03-3822 (rel. Nov. 26, 2003); *Public Notice*, Wireline Competition Bureau Seeks Comment on Petition of Centennial Cellular Tri-State Operating Partnership and Centennial Claiborne Cellular Corp. for Waiver of Section 54.313(d) of the Commission's Rules, CC Docket No. 96-45, DA 03-3821 (rel. Nov. 26, 2003).

² See 47 U.S.C. § 254(e).

CenturyTel³ opposes these Petitions because Centennial has made no showing that the Michigan or Mississippi PSCs would be willing to issue the necessary certification for the waiver period. Further, even assuming that the PSCs would issue such a certification, Centennial has neither shown special circumstances justifying a waiver nor demonstrated that a waiver would serve the public interest.⁴

I. Centennial's Novel Waiver Request Is Fundamentally Flawed

Section 254(e) of the Communications Act of 1934, as amended (the “Communications Act”), requires recipients of federal universal service support to use that support “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” 47 U.S.C. § 254(e). Implementing this mandate, the Commission requires every state PSC to certify annually that each carrier receiving support will use that support in accordance with the statutory standard. 47 C.F.R. §§ 54.313, 54.314. Carriers that are not subject to the jurisdiction of a state PSC may self-certify their compliance directly to the Commission and to the Universal Service Administrative Corporation (“USAC”), 47 U.S.C. §§ 54.313(b), 54.314(b).

³ Centennial's CMRS licensed commercial mobile radio service (“CMRS”) territory significantly overlaps CenturyTel's local exchange service areas in Michigan. Centennial's territory does not overlap CenturyTel's service area in Mississippi, but CenturyTel believes that the Commission should deny the waiver requests in both Petitions for the same reasons.

⁴ CenturyTel also observes that Centennial's waiver request is, at best, incomplete. Centennial requests a waive of Section 54.313(d) of the Commission's rules, 47 C.F.R. § 54.313(d), which governs the filing of state certifications regarding the use of federal universal service support by non-rural carriers and other ETCs competing with such non-rural carriers, while Section 54.314(d) of the Commission's rules, 47 C.F.R. § 54.314(d) governs such filings as they apply to rural carriers and other ETCs competing against these rural carriers. The Michigan PSC has granted Centennial ETC status with respect to extensive territory served by rural telephone companies, as defined in Section 3(37) of the Communications Act, 47 U.S.C. § 153(37). Therefore, Section 54.314 apparently governs at least some of the necessary state PSC certifications, yet Centennial does not seek any waiver of this rule.

While Centennial casts its waiver request as a routine application of past Commission precedent, in fact it is nothing of the sort. While the Commission has, on occasion, granted carrier requests for waivers of the deadline by which the *carriers* themselves must self-certify their compliance with Section 254(e), CenturyTel has failed to identify even one instance in which the Commission granted a request for a waiver of the deadline by which a *state PSC* must file the required certification that was not made by the state PSC or with its support.⁵ Indeed, the Commission has virtually *required* that such requests be filed or supported by the state PSC.⁶ Indeed, such a waiver would have little effect unless a state PSC were prepared to file the necessary certification with respect to the time period for which the waiver was sought

⁵ The cases Centennial cites in support of its request are therefore not on point, in that they involve carrier requests for a waiver of the deadline by which to file a self-certification. See *Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, Order, 18 FCC Rcd 7138 (Tel. Access Policy Div., Wir. Comp. Bur. 2003), at para. 3; *RFB Cellular, Inc. Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*, Order, 17 FCC Rcd 24387 (Wir. Comp. Bur. 2002), at para. 4.

The Commission on three occasions has granted requests for waivers of the deadline by which a state PSC must file the required certification, all of which were requested by the state PSC itself or with its support, see *Western Wireless Corp. Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, DA 03-2364 (Tel. Access Policy Div., Wir. Comp. Bur. rel. Jul. 18, 2003); *Connecticut Dep't of Pub. Util. Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Rural Carriers*, Order, 17 FCC Rcd 24804 (Tel. Access Policy Div., Wir. Comp. Bur. 2002); *West Virginia Pub. Serv. Comm'n Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, Order, 16 FCC Rcd 5784 (2001).

In addition, in one instance, the Commission granted a carrier request to withdraw its request for a waiver the deadline for a state PSC to file the required certification without further action. See *Cellular South License, Inc., Petition for Waiver of Section 54.313 of the Commission's Rules and Regulations*, Order, 17 FCC Rcd 6346 (Tel. Access Policy Div., Wir. Comp. Bur. 2002).

⁶ *Western Wireless*, at para. 6 (“Although section 54.314 requires states to certify that a competitive ETC will use universal service support for its intended purposes, we believe in this case it is appropriate to consider this waiver request filed by Western Wireless, particularly in light of the support of the South Dakota Commission, the state entity with the obligation to make the appropriate section 54.314 certification.”) (emphasis added).

and the Commission has therefore been justifiably reluctant to expend its resources in granting such petitions.

The waivers Centennial requests here would allow the Michigan and Mississippi state PSCs each to file an out of time certification, pursuant to Section 54.313, that Centennial intends to use the support it would receive in the September-December, 2003 time period in accordance with the strictures of Section 254(e). Centennial offers no indication, however, that either state PSC intends to do so. Indeed, in granting Centennial's request for ETC status, the Michigan PSC specifically rejected Centennial's request for such an ETC certification, holding that, "it is appropriate to include Centennial in the [Michigan] Commission's annual certification for year 2004 when it makes this submission. Since the deadlines have already passed for an ETC to receive support for any quarter in year 2003, there is no reason to issue a separate certification for Centennial at this time."⁷ Similarly, Centennial's Mississippi Petition reveals that the Mississippi PSC filed its Section 254(e) certification with respect to Centennial on September 29, 2003, expecting support to commence in January, 2004.⁸

Especially in light of the Michigan PSC's explicit rejection of Centennial's request for an extraordinary Section 254(e) certification for the waiver period in question, the Commission may draw no conclusions either way as to whether these state PSCs believe that Centennial would use any support it receives prior to January 2004 in accordance with Section 254(e).

⁷ *Application of Michiana Metronet Inc., Centennial Michigan RSA 6 Cellular Corp., and Centennial Michigan RSA 7 Cellular Corp. for designation as eligible telecommunications carriers pursuant to Section 214(e)(6) of the Communications Act of 1934*, Case No. U-13751, Opinion and Order (Mich. Publ. Serv. Comm'n Sept. 11, 2003), at 17 (attached as Exhibit A to Centennial's Michigan Petition).

⁸ Mississippi Centennial Petition at 2-3.

II. Centennial's Petition Fails to Satisfy the Commission's Waiver Standard

The Commission's rules require a party to show "good cause" when seeking a waiver of the Commission's rules. 47 C.F.R. § 1.3. Under well-established precedent, a party seeking a waiver of the Commission's rules must show that it is facing special circumstances that justify a deviation from the general rule and that such a deviation would serve the public interest. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). The Centennial Petitions satisfy neither prong of this test.

First, Centennial makes no allegation that it faces special circumstances that would justify a waiver. To the contrary, throughout its Petition, it describes a perceived inequity that would apply equally to any CLEC in the first few months after a state PSC designated it as an ETC. In truth, the Petitions seek a change to the rules governing the submission of state public utility commission ("PSC") certifications that federal universal service support will be used only for the provision, maintenance, and upgrading of facilities and services for which such support is intended, as required under Section 254(e) of the Communications Act. Centennial nowhere attempts to demonstrate why its situation is unique in the least respect, nor does Centennial justify Commission preemption of state PSCs that have rejected its arguments already. Centennial simply is attempting to obtain by waiver a rule change that it ought to seek through the rulemaking process. The Commission does not allow parties to short-circuit its processes in this way.⁹

⁹ E.g., *Section 64.702 of the Commission's Rules With Respect to Non-Dominant Resellers Of Interexchange Services*, Order, 11 FCC Rcd 3014, para. (1996) ("We deny petitioners' request [for a waiver of the CPE bundling rule]. The relief requested, if granted, would significantly change the scope of the application of our current unbundling rule. Such a significant modification is more appropriately considered through a rulemaking than through a petition for waiver."); *Federal-State Joint Board on Universal Service; Request for Review of the Decision of the Universal Service Administrator by Hamilton County School Board, Jasper, Florida*, Order, 16 FCC Rcd 8403, para. 6 ("To the extent that it is requesting a waiver, Hamilton does not indicate that special circumstances exist warranting a deviation from the

Second, Centennial has made no showing that a waiver would serve the public interest, either in Michigan or Mississippi, or as a national matter. Centennial is already a successful CMRS provider in both states. It has provided these services for over a decade and, today, it serves over one million wireless customers across the U.S. and in the Caribbean.¹⁰ Absent this waiver, it will apparently be eligible to receive support in January 2004, after a brief delay of only three months from the time it obtained ETC designation in Michigan and Mississippi. Nowhere does Centennial demonstrate that federal support for the September-December, 2003 period is essential to its continued success. Indeed, Centennial makes no suggestion whatsoever that it will provide the public in these states with greater services, improved services, or more affordable services whether it receives federal support for the waiver period or at any other time.

III. The Commission Should Await the Joint Board's Recommendations Before Addressing the Issues Raised in the Petition

Further, at a time when the Joint Board is reviewing the entire ETC designation and high cost support process as a result of pressure on the support mechanism created by competitive ETCs, it would be contrary to the national public interest for the Commission to take extraordinary action to allow yet another competitive ETC to receive an additional measure of funding over and above that which the Commission's current rules (as interpreted by the states) allow. The Joint Board is already considering a host of issues surrounding ways in which it may

general rule. Rather, Hamilton argues that the general rule treats individual schools unfairly as compared to school districts. This is not a special circumstance justifying a waiver, but an argument in support for a rulemaking to change the Commission's rules. A Request for Review or a Request for Waiver is not the appropriate means for requesting such consideration. Instead, Hamilton should properly file a Petition for Rulemaking. Accordingly, we deny Hamilton's request.").

¹⁰ See Centennial Communications Corporate Overview (available at: http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=CYCL&script=2100&layout=7) (visited Dec. 5, 2003).

protect rural universal service through clearer and more stringent federal standards governing the designation of additional competitive ETCs and the redefinition of rural ILEC service areas.¹¹ Meanwhile, access by Centennial and other competitive ETCs to federal universal service support affects the rapidly increasing contribution factor for all carriers and their customers nationwide. While Centennial has already been designated an ETC under existing processes, there is no reason for the Commission to exacerbate the pressures competitive ETCs place on the federal high cost funding mechanism by granting this waiver.

IV. Conclusion

For the foregoing reasons, CenturyTel opposes Centennial's Petitions for waiver and urges the Commission to deny them forthwith.

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December 10, 2003

Respectfully submitted,
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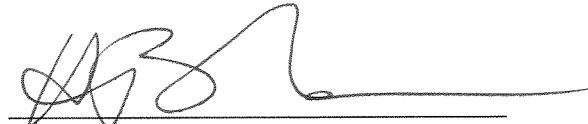
¹¹ See Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, FCC 03J-1, CC Docket No. 96-45 (rel. Feb. 7, 2003). CenturyTel has commented extensively on these issues and provided live testimony to the Joint Board. See *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Comments of CenturyTel, Inc. (filed May 5, 2003), Reply Comments of CenturyTel, Inc. (filed June 3, 2003), Prepared Testimony of Jeff Glover, Vice President of CenturyTel, Inc., on Behalf of Independent Telephone & Telecommunications Alliance (filed July 22, 2003).

CERTIFICATE OF SERVICE

I, Karen Brinkmann, hereby certify that a copy of the foregoing Opposition of CenturyTel, Inc. to the above-captioned Petitions for Waiver filed by Centennial Cellular Tri-State Operating Partnership, Centennial Claiborne Cellular Corp., Michiana Metronet Inc., Centennial Michigan RSA 6 Cellular Corp., and Centennial Michigan RSA 7 Cellular Corp. in CC Docket No. 96-45 was served this 10th day of December, 2003, by electronic mail, upon the following:

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